

House Committee on Energy and Commerce
Subcommittee on Commerce Manufacturing and Trade
Additional Questions for the Record – Jonathan Gold, NRF
“Industry Perspectives on the Consumer Product Safety Commission”

The Honorable Michael C. Burgess, M.D.

In your testimony, you discussed concerns with how retailers are increasingly the first organization that CPSC is contacting during the recall process instead of the product’s manufacturer. In previous sessions of Congress, concerns were raised about recalled products making their way into the stream of commerce through discount retail chains. Please explain your concerns with the CPSC’s outreach process during a recall, and additionally, what is being done in the retail industry to ensure that recalled products are not reentering the stream of commerce through discount merchants.

Thank you for your question, Mr. Chairman.

NRF members understand and take very seriously their obligations under the law with respect to product recalls in conjunction with CPSC. In my testimony, I raised the legitimate concern of our members that increasingly the CPSC has looked to retailers first and foremost to undertake product safety recalls, whereas in the past the agency has generally looked primarily to manufacturers to do so.

While the Consumer Product Safety Act clearly allows the CPSC to seek a product recall from retailers, it is very often the product manufacturer that is best positioned to understand in the first instance whether or not a product defect exists, and how to address that if such exists. The CPSC has been going straight to retailers and “asking” them to stop selling products long before the agency has made any safety determinations about that product (for instance, window blinds and hoverboards). This goes against the regulatory process. The apparent trend to look first to retailers to undertake a recall, in our view, is inappropriate.

To address the second point in your question, NRF is eager to engage the CPSC in a fulsome dialogue to explore the issue of recall effectiveness, and we were pleased to recently learn of the CPSC’s planned workshop in this regard for later this year. It is in every retailers’ best interest to remove violative or unsafe products from sale immediately and we are eager to explore every reasonable avenue to do so.

Relatedly, NRF takes issue with any attempt by the CPSC to effectively avoid its statutory guidelines by asking or demanding that retailers remove from sale products that have not been determined to be either unsafe or in violation of a federal product safety standard. Such requests in our view are inappropriate and not in keeping with the letter or spirit of the agency’s statutes.

Moreover, our members continue to strive to maximize recall effectiveness and ensure recalled products do not end up back in the stream of commerce. For example, recalling companies routinely promote recall press releases via their web sites and social media, as well as other means to alert consumers about recalls. Once they are aware of the recall they will take steps to

remove the recalled product based on the corrective action plan, including instituting stop sales on the recalled product and destruction of the product if necessary.

We look forward to a further, positive engagement with CPSC to maximize consumer response to recalls generally.

The Honorable Gregg Harper

Prior to joining the retailers, you spent some time with Customs and Border Protection.

How would you describe the level of coordination between the CPSC and CBP? Does industry have confidence in how CPSC is working to collaborate with other agencies at the border to truly improve targeting for unsafe imports?

The level of coordination and cooperation between the CPSC and CBP has drastically improved since the passage of the Consumer Product Safety Improvement Act (CPSIA). However, there are certainly areas where cooperation and coordination needs improvement. This also includes collaboration with affected stakeholders.

Specifically, as CPSC continues to focus on risk-based targeting through its Risk Assessment Methodology (RAM), there needs to be continued collaboration with CBP to ensure alignment on strategy and methodology. This again is where it would be valuable to work with the importing community to improve overall risk based targeting. It is especially important that strategy and protocols are aligned between CPSC and CBP when a determination is made to stop a shipment at a port of entry. It is imperative that there be a clear understanding among the agencies as to what the protocols will be when a shipment is stopped due to a product safety (CPSC) concern.

To its credit, the CPSC has participated in many meetings of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC). In addition, a product safety work group was set up under the COAC to help advise CPSC as they worked to develop the Alpha Pilot for the electronic submission of the General Certificates of Conformity as part of the Section 1110 rule. NRF welcomed and appreciated this action by the CPSC.

However, the functionality of the Working Group was made difficult because CPSC could not participate directly in the meetings due to the agency's Open Meetings Rule. NRF and other stakeholders (indeed, several Commissioners) have noted this problem with respect to industry stakeholders and we would encourage the CPSC to seek a solution that invites both transparency and full engagement on what are very often sensitive issues. NRF and other industry groups continue to believe a CPSC advisory committee comprised of key stakeholders will be beneficial for the agency and will help improve the collaboration and coordination with CBP and industry as a whole.